

FCC MAIL SECTION

DOCKET FILE COPY ORIGINAL

Federal Communications Commission

DA 98-813

MAY 5 8 35 AM '98

DISPATCHED BY Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 97-204
Table of Allotments,) RM-9143
FM Broadcast Stations.) RM-9158
(McFarland and Coalinga, California))

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 22, 1998

Released: May 1, 1998

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making* ("Notice"), 12 FCC Rcd 13899 (1997), issued in response to two mutually exclusive petitions for rule making seeking the allotment of Channel 247A to McFarland or Coalinga, California. The proposal to allot Channel 247A to McFarland (RM-9143) as that community's second local FM transmission service was filed on behalf of Kerner Broadcasting Company ("Kerner"). The second proposal filed on behalf of James K. Zahn ("Zahn") seeks the allotment of Channel 247A to Coalinga (RM-9158) as that community's second local commercial FM transmission service.¹ Kerner and Zahn each filed supporting comments as well as joint reply comments in response to the *Notice*. Comments were also filed by William L. Zawila, permittee of Station KNKS(FM), Coalinga, California.²

¹American Educational Broadcasters, Inc. has been issued a construction permit to operate a noncommercial educational facility on Channel 202B at Coalinga. We also note that subsequent to the issuance of the *Notice* herein, an application was filed by Family Stations, Inc. to operate on Channel 214B1 at Coalinga (File No. BPED-971202MB).

²Zawila's comments, filed as a counterproposal, seek the reallocation of Channel 261B from Coalinga to Kettleman City, California. However, Zawila's proposal is technically and procedurally defective and therefore is not acceptable for consideration in this proceeding. A counterproposal is a proposal for an alternative and mutually exclusive allotment or set of allotments in the context of the proceeding in which the proposal is made. See e.g., *Implementation of BC Docket 80-90 to Increase the Availability of FM Broadcast Assignments*, 5 FCC Rcd 931 (1990). In this instance, Zawila's proposal is not mutually exclusive with the proposals under consideration herein at McFarland or Coalinga. Further, we note that Zawila failed to include an affidavit verifying that the statements contained in his proposal are accurate to the best of his knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel shall be signed and verified by the party and his/her address stated. In the absence of such verification, the proposal may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioner's on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3910, N.41 (1990). Therefore, we will dismiss Zawila's counterproposal.

2. As stated in the *Notice*, each petitioner requested the allotment of FM Channel 247A to their respective community. Since the proposals are separated by a distance of 105.3 kilometers (65.4 miles), whereas a minimum distance of 115 kilometers (71 miles) is required between Class A co-channel allotments, they are mutually exclusive. Although the *Notice* proposed allotting Channel 247A to either community, the proponents were requested to demonstrate in their comments to the *Notice* why their community should be preferred, utilizing as a guide the criteria set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). Additionally, petitioners were advised that in the event the comparative factors proved to be equivalent, the larger of the two communities would be preferred.³ Petitioners were also offered the option to determine if alternate channels were available to remove the noted conflict.

3. In response to the *Notice*, Kerner and Zahn each filed comments supporting their respective proposals. Kerner remarks that although the population of the two communities is comparable, McFarland presently has only one local aural transmission service, whereas the proposal to allot Channel 247A to Coalinga represents that community's fourth local aural transmission service.⁴ Therefore, Kerner asserts that McFarland, with fewer existing services, should be preferred. Zahn comments that as each community seeks a second local FM transmission service the proposals are otherwise equal, and therefore the population difference must favor Coalinga as the larger community. However, Zahn offers that Channel 247A may co-exist at each community if the reference point for the Coalinga proposal is site restricted to an area approximately 10 kilometers (6.2 miles) northwest of the community, at coordinates 36-12-37 NL and 120-25-35 WL. In joint reply comments the proponents endorse the placement of a site restriction on proposed Channel 247A at Coalinga, as suggested by Zahn, to enable Channel 247A to be allotted to McFarland as well, consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules.⁵

4. A staff engineering analysis confirms that the requested placement of a site restriction on proposed Channel 247A at Coalinga removes the conflict with proposed Channel 247A at McFarland. Therefore, Channel 247A may be allotted to McFarland at a restricted site located 10.3 kilometers (6.4 miles) west of the community at coordinates 35-40-16 and 119-20-30.⁶ Additionally, Channel 247A may be allotted to Coalinga, California, consistent with the

³According to the 1990 U.S. Census, McFarland contains a population of 7,005 persons, whereas Coalinga is attributed therein with a population count of 8,212 individuals.

⁴Kerner notes that Coalinga is also served by Stations KKFO(AM) and KNGS(FM), in addition to Station KAZB(FM), Channel 202B.

⁵Although the joint reply comments also address Zawila's "counterproposal", no discussion thereon is required. See footnote 2, *supra*.

⁶The site restriction is required to avoid a short spacing to Station KSEQ(FM), Channel 246B, Visalia, California, as coordinates 36-38-08 and 118-56-32, as well as to Station KRME(FM), Channel 249A, Shafter, California, at coordinates 35-25-10 and 119-11-54.

technical requirements of the Commission's Rules provided the transmitter site therefor is located at least 10 kilometers (6.2 miles) northwest of the community, utilizing coordinates 36-12-37 NL and 120-25-35 WL.

5. In light of the foregoing, and in view of the interest expressed in providing an additional local FM transmission service at McFarland and at Coalinga, California, we will allot Channel 247A to each community, as requested.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective June 15, 1998, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>
Coalinga, California	247A, 261B
McFarland, California	247A, 275B1

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. A filing window for Channel 247A at Coalinga, and at McFarland, California, will not be opened at this time. Instead, the issue of opening a filing window for Channel 247A at Coalinga and at McFarland will be addressed by the Commission in a subsequent Order.

9. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 247A at Coalinga and McFarland, California, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau